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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION,

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 23-cv-02880-JSC

**NON-PARTY NINTENDO OF AMERICA
INC. MOTION FOR A PROTECTIVE
ORDER RE DKT. NO. 175 (PLAINTIFF'S
PROPOSED PRETRIAL FINDINGS OF
FACT AND CONCLUSIONS OF LAW)**

Pursuant to Fed. R. Civ. P. 26(c), Non-Party Nintendo of America Inc. (“NOA”) hereby moves for a protective order regarding its confidential information contained in Plaintiff’s Federal Trade Commission (“FTC”) Proposed Pretrial Findings of Fact and Conclusions of Law (Dkt. No. 175).

I. INTRODUCTION

On June 22, 2023, Plaintiff filed its Proposed Pretrial Findings of Fact and Conclusions of Law. (Dkt. No. 175). As of the time of this filing, Plaintiff has failed to file the required motion under Civil L.R. 79-5(f), an Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed. On June 27, 2023, counsel for NOA inquired whether Plaintiff intended to make such a filing or at minimum provide NOA with the requisite notice. At this time, Plaintiff has neither made the required filing pursuant to Civil L.R. 79-5(f) or informed NOA which portions of their Proposed Pretrial Findings of Fact and Conclusions of Law included Nintendo’s confidential information produced during the course of discovery in *In the Matter of Microsoft Corp. and Activision Blizzard, Inc.*, before the FTC Office of Administrative Law Judges, Docket No. 9412. Therefore, NOA is unable to file its Statement designating its confidential information to remain under seal because it does not know what information of NOA’s Plaintiff has incorporated into its Proposed Pretrial Findings of Fact and Conclusions of Law.

II. ARGUMENT

Under Fed. R. Civ. P. 26(c), the court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. A good cause analysis under Rule 26(c) entails a balancing of the needs for discovery against the need for confidentiality. *CBS Interactive, Inc. v. Etalize, Inc.*, 257 F.R.D. 195, 205 (N.D. Cal. 2009). Courts have broad latitude under the law to tailor protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information. *Id.* at 201.

Good cause exists here. Under Civil L.R. 79-5(f), “[f]or any document a party (“Filing

Party”) seeks to seal because that document has been designated as confidential by another party or non-party (the “Designating Party”), the Filing Party must, instead of filing an Administrative Motion to File Under Seal, file an Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed.” (emphasis added). Due to Plaintiff’s failure to provide the required notice, NOA objects to the disclosure of any of NOA’s confidential information contained in Plaintiff’s Proposed Pretrial Findings of Fact and Conclusions of Law. To date, NOA has dutifully filed its Civil L.R. 79-5 Statements when given the requisite notice. *See* Dkt. Nos. 168, 219, 220, 221, 238, 239. Alternatively, NOA requests that such information be provisionally sealed until NOA may confer with Plaintiff to obtain the necessary information in order to file its Civil L.R. 79-5 Statement.

III. CONCLUSION

For the foregoing reasons, Non-Party NOA respectfully request the Court to keep sealed the entirety of NOA’s confidential information contained in Plaintiff’s FTC Proposed Pretrial Findings of Fact and Conclusions of Law (Dkt. No. 175) and for that information to remain redacted on the Court’s public docket. Alternatively, NOA requests that such information be provisionally sealed until NOA may confer with Plaintiff to obtain the necessary information in order to file its Civil L.R. 79-5 Statement.

Dated: June 29, 2023

VENABLE LLP

By: /s/ Steven E. Swaney
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